

**STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN**

**In the Matter of
Frank Mileto, Unlicensed**

**SETTLEMENT AGREEMENT
AND
CEASE AND DESIST ORDER**

Board File No. 2010-0035

TO: Frank Mileto
14 Beaver Brook Drive
Long Valley, New Jersey 07853

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2010) and Minnesota Statutes section 326.111 (2010) to review complaints concerning the unauthorized practice of architecture, professional engineering, land surveying, landscape architecture, geoscience and interior design, and to take action pursuant to those statutes whenever appropriate.

The Board received a complaint concerning Frank Mileto ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Settlement Agreement and Cease and Desist Order.

SETTLEMENT AGREEMENT

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

State of Minnesota
Board of AELSLAGID

FEB 08 2011

Rec'd 2,000.00

1. Jurisdiction. Pursuant to Minnesota Statutes section 326.111, subdivision 3 (2010), the Board is authorized to issue an order requiring an unlicensed person to cease and desist from practicing professional engineering in the State of Minnesota. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Settlement Agreement and Cease and Desist Order.

2. Facts. This Settlement Agreement is based upon the following facts:

a. Respondent is not currently and never has been licensed by the Board as a Professional Engineer in the State of Minnesota.

b. Respondent was licensed by the Board as an Architect in the State of Minnesota, license number 26239 on September 25, 1998. As of the date of this Settlement Agreement and Cease and Desist Order, Respondent's Architect license in Minnesota is current with an expiration date of June 30, 2012.

c. Respondent practiced professional engineering, as defined in Minnesota Statutes section 326.02, subdivision 3, without a Professional Engineer license, by signing the electrical and mechanical drawings for the Fuji Steak House, located in Waite Park, Minnesota on November 19, 2009.

Fuji Steak House

1. On the E-2, 'Lighting Plan' drawing dated November 19, 2009, Respondent, using his Architect license #26239, signed and certified the drawing for the Fuji Steak House, located in Waite Park, Minnesota. A partial copy of Respondent's certification on that date is

attached hereto as Exhibit A. A true and correct set of drawings is located in the Board office.

2. On the E-3, 'Panel Schedule & Elec. Riser Diagram Plan' drawing dated November 19, 2009, Respondent, using his Architect license #26239, signed and certified the drawing for the Fuji Steak House, located in Waite Park, Minnesota. A partial copy of Respondent's certification on that date is attached hereto as Exhibit B. A true and correct set of drawings is located in the Board office.

3. On the M-1, 'HVAC Plan' drawing dated November 19, 2009, Respondent, using his Architect license #26239, signed and certified the drawing for the Fuji Steak House, located in Waite Park, Minnesota. A partial copy of Respondent's certification on that date is attached hereto as Exhibit C. A true and correct set of drawings is located in the Board office.

4. On the M-2, 'Ventilation Plan' drawing dated November 19, 2009, Respondent, using his Architect license #26239, signed and certified the drawing for the Fuji Steak House, located in Waite Park, Minnesota. A partial copy of Respondent's certification on that date is attached hereto as Exhibit D. A true and correct set of drawings is located in the Board office.

d. In a letter to the Board dated February 4, 2010, Respondent states:

"I did not intend to violate the rules or practice engineering. If my efforts went beyond the scope of Architecture it certainly is not intentional and will cease immediately. I apologize if I misinterpreted the scope of work permitted in:

Minnesota Statutes 326.02, Sub 2 Practice of Architecture. Any person shall be deemed to be practicing architecture, within the meaning of sections 326.02 to 326.15, who holds out as being able to perform or who does perform any professional service, such as planning, design, or supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any private or public buildings, structures or projects, or the equipment or utilities thereof, or the accessories thereto, wherein the safeguarding of life, health, or property is concerned or involved, when such professional service requires the application of the art and science of construction based upon the principles of mathematics, aesthetics, and the physical sciences, acquired by education or training, and by experience. For the purposes of this subdivision "supervision" is a professional service as distinguished from superintending of construction and means the performance or the supervision thereof, of reasonable and ordinary on the site observations to determine that the construction is in substantial compliance with the approved drawings, plans and specifications ...[sic]... A true and correct copy of the February 4, 2010 letter is attached as Exhibit E.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, subdivisions 1 and 3 (2010) and are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board may issue an Order in accordance with the following terms:

a. Cease and Desist Order. Respondent shall cease and desist from practicing professional engineering in Minnesota until such time as he becomes licensed as a professional engineer in the State of Minnesota.

b. Civil Penalty. Respondent shall pay a civil penalty of Two Thousand Dollars (\$2,000.00) to the Board. Respondent shall submit a cashier's check or money order for Two Thousand Dollars (\$2,000.00) to the Board within sixty (60) days of the date of the Board Order approving this Settlement Agreement and Cease and Desist Order.

5. Judicial Relief. If the Respondent violates paragraph 4 above, a district court of this state may, upon application of the Committee, enter an Order enjoining Respondent from such unauthorized practices, ordering Respondent to show cause why the required civil penalty has not been paid, and granting the Board its costs, reasonable attorney fees, and other appropriate relief.

6. Waiver of Respondent's Rights. For the purpose of this Settlement Agreement, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent and to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2010). Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order requiring the action specified in paragraph 4 herein. Respondent waives the right to any judicial review of this

Settlement Agreement and Cease and Desist Order or the attached Board Order by appeal, writ or certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2010), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Settlement Agreement and Cease and Desist Order. In the event the Board in its discretion does not approve this Settlement Agreement and Cease and Desist Order, this Settlement Agreement shall be null and void and shall not be used for any purpose by either party hereto. If this Settlement Agreement is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2010), Respondent agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Settlement Agreement and the record.

9. Record. The Settlement Agreement, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Settlement Agreement.

10. Data Classification. Under the Minnesota Government Data Practices Act, this Settlement Agreement and Cease and Desist Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2010). All

documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Settlement Agreement and Cease and Desist Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of professional engineering.

11. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Settlement Agreement and which is not directly related to the specific facts and circumstances set forth herein.

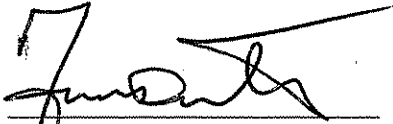
12. Entire Agreement. Respondent has read, understood, and agrees to this Settlement Agreement and Cease and Desist Order and is freely and voluntarily signing it. The Settlement Agreement and Cease and Desist Order contains the entire agreement between the parties. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Settlement Agreement and Cease and Desist Order shall be served personally or by first class mail on

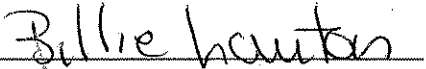
Respondent. The Settlement Agreement shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT



Frank Mileto

COMPLAINT COMMITTEE

BY: 
Billie Lawton, Public Member
Complaint Committee Chair

Dated: 3 FEB, 2011

Dated: 3-11, 2011

ORDER

Upon consideration of the foregoing Settlement Agreement and based upon all the files, records and proceedings herein, all terms of the Settlement Agreement are approved and hereby issued as an Order of this Board on this the 11 day of MARCH, 2011.

MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND
INTERIOR DESIGN

By: 

Kristine A. Kubes, J. D.

Board Chair



MEN
gypsum board ceiling

WALK-IN
FREEZER

WALK-IN
COOLER



2X2 FLUORESCENT FIXTURE



TOILET FAN



RECESSED LIGHTING FIXTURE



JUNCTION BOX

LIGHTING NOTES:

A. At least 540 lux (50 foot-candles) at surface where a food employee is working with food or working with utensils or equipment, including knives, slicers, grinders, or saws, where employee safety is a factor and in areas used for warewashing other than the area behind a bar.
Note: Including under most ventilation canopies.

1) Light fixtures must be provided that are fire resistant, vapor-proof, and meet requirements of NSF standard No. C-2 and UL electrical safety standards.

2) At least 50 foot-candles of lighting measured at cooking surface.

B. At least 220 lux (20 foot-candles)

1) At a surface where food is provided for consumer self-service, including buffets and salad Bars, or where fresh produce or packaged foods are sold or offered for consumptions.

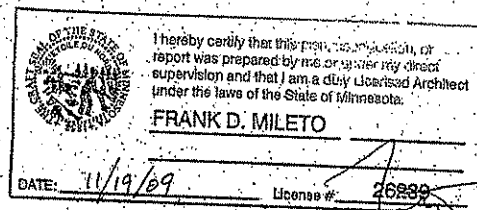
2) Inside equipment including reach-in and under-counter refrigerators.

3) At a distance of 75 cm (30 inches) above the floor in areas used for equipment and utensil storage and in toilet rooms, and

4) for areas behind a bar exempt under item C.

C. At least 110 lux (10 foot-candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry storage areas, and in other areas and rooms during periods of cleaning.

EXHIBIT A



DRAWN: CJ DATE: 11-13-2009 REVISED:	FUJI STEAK HOUSE 148 2ND. ST. S. WAITE PARK, MN 56387	PROJ. # 52609 SHEET E-2
	LIGHTING PLAN	
	FOOD SERVICE CONSULTANT LAM & ASSOCIATES CONSULTING, INC. 34 ALLEN STREET, NEW YORK, NY 10002 TEL: 212 732-3450 FAX: 212 732-3145 EMAIL: HSLAMCO@GMAIL.COM	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  <p>FRANK D. MILETO A.I.A. 14 BEAVER BROOK DRIVE, LONG VALLEY, N.J. 07853 Tel: (908) 876-9400 Fax: (908) 876-9455 Email: fmileto@comcast.net ARCHITECT-PROFESSIONAL PLANNER</p> </div> <div style="border: 1px solid black; border-radius: 50%; padding: 10px; text-align: center;"> PLANS NOT VALID UNLESS SEALED </div> </div>		

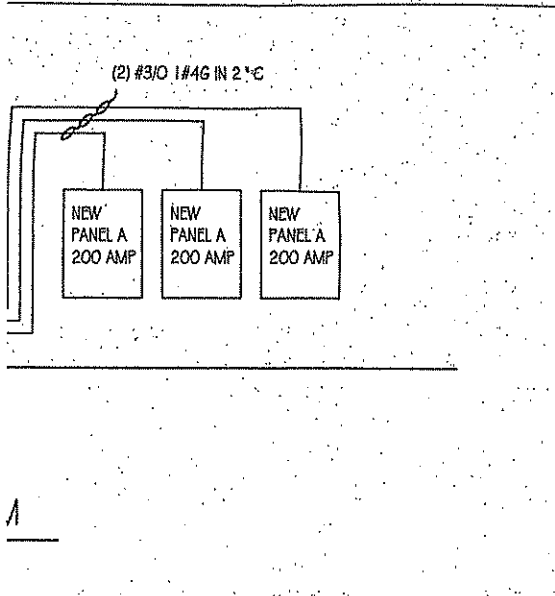
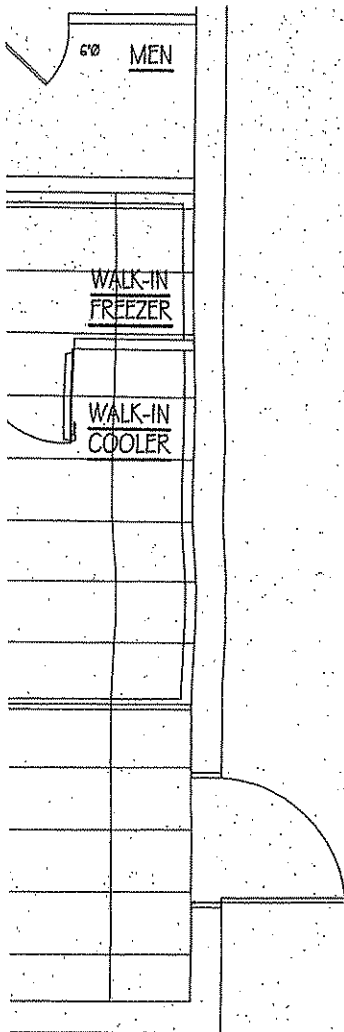


EXHIBIT B

	I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the State of Minnesota.
	FRANK D. MILETO
DATE: <u>11/19/09</u>	License # <u>26239</u>

DRAWN: <u>qj</u> DATE: <u>11-13-2009</u> REVISED:	FUJI STEAK HOUSE 148 2ND. ST. S. WAITE PARK, MN. 56387		PROJ. # <u>52609</u> SHEET E-3
	PANEL SCHEDULE & ELEC. RISER DIAGRAM PLAN		
	FOOD SERVICE CONSULTANT LAM & ASSOCIATES CONSULTING, INC. 34 ALLEN STREET, NEW YORK, NY 10002 TEL: 212 732-3450 FAX: 212 732-9145 EMAIL: HSLAMCO@GMAIL.COM		
	<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> </div> <div> FRANK D. MILETO A.I.A. 14 BEAVER BROOK DRIVE, LONG VALLEY, N.J. 07853 Tel: (908) 876-6400 Fax: (908) 876-6455 Email: fmileto@comcast.net ARCHITECT-PROFESSIONAL PLANNER </div> <div style="text-align: center;"> <div style="border: 1px solid black; border-radius: 50%; width: 100px; height: 100px; display: flex; align-items: center; justify-content: center;"> PLANS NOT VALID UNLESS SEALED </div> </div> </div>		








T	AFUE (%)	ARI COOLING (BTUH)	SEER/EER	MCA	MOCP	VOLTAGE	CONDENSATE LINE SIZE (IN)
	82.0	90,000	-/11.0	44.2	50	208/3Ø	1.25
	82.0	61,000	-/11.0	34.9	40	208/3Ø	1.00
	82.0	51,000	-/11.0	28.9	30	208/3Ø	1.00
	82.0	41,000	-/11.0	24.9	30	208/3Ø	1.00
	82.0	90,000	-/11.0	44.2	50	208/3Ø	1.25

7. ALL RECTANGULAR DUCT SHALL BE INSULATED WITH A MINIMUM OF 1" INTERNAL LINER, 2 LB. DENSITY. ALL ROUND DUCT AND DIFFUSER TOP SHALL HAVE A MINIMUM OF 2" FOIL BACKED BLANKET TYPE INSULATION WITH ALL JOINTS BUTTED AND TAPED. INSULATION "R" VALUES SHALL COMPLY WITH GOVERNING ENERGY EFFICIENCY REQUIREMENTS.
8. ALL DUCT DIMENSIONS SHOWN ON PLANS ARE SHEET METAL DIMENSIONS. ALLOWANCE HAS BEEN MADE FOR LINER.
9. CONTRACTOR SHALL COORDINATE LOCATION OF ALL SUPPLY AND RETURN AIR REGISTERS, DUCT, GRILLES, AND DIFFUSERS WITH LIGHTS AND CEILING PATTERNS.
10. SUPPLY AIR DIFFUSERS SHALL BE KRUEGER MODEL 1104 WITH OPPOSED BLADE DAMPERS AND FRAME 23 FOR LAY-IN CEILING.
11. MOUNT THERMOSTAT AT 5'4" MAXIMUM ABOVE THE FINISHED FLOOR.
12. PROVIDE U.L.F.D. AT ALL DUCT OR AIR DISTRIBUTION PENETRATIONS OF RATED WALLS, FLOORS, OR CEILING ASSEMBLIES W/ ACCESS.
13. PROVIDE CONDENSATE DRAIN W/ TRAP AT UNITS WITH DRAIN TO OPENING BY PLUMBING CONTRACTOR. COORDINATE W/ PLBG. CONTRACTOR.
14. MECHANICAL CONTR. SHALL CONFER W/ ELECTRICAL CONTR. & COORDINATE ALL POWER REQUIREMENTS POINTS OR CONNECTION ETC. COORDINATE W/ PLBG. CONTRACTOR TO INSURE PROPER CONDENSATE DRAINS.

EXHIBIT C

LEGEND:

- S/A  HVAC SUPPLY AIR GRILL
- R/A  HVAC RETURN AIR DIFFUSER
-  T THERMOSTAT
-  FLEXIBLE AIR DUCT
-  S DUCT SMOKE DETECTOR

AIR DISTRIBUTION		
DUCT Ø	FROM (CFM)	TO (CFM)
10"	221	400
12"	401	680

DRAWN: QJ	FUJI STEAK HOUSE 148 2ND. ST. S. WAITE PARK, MN 56387	PROJ. # 52609
DATE: 11-13-2009		SHEET
REVISED:		M-1
HVAC PLAN		
FOOD SERVICE CONSULTANT LAM & ASSOCIATES CONSULTING, INC. 34 ALLEN STREET, NEW YORK, NY 10002 TEL: 212 732-3450 FAX: 212 732-9145 EMAIL: HSLAMCO@GMAIL.COM		



FRANK D. MILETO AIA
 14 BEAVER BROOK DRIVE, LONG VALLEY, NY 12553
 Tel: (808) 876-9400 Fax: (808) 876-9455
 Email: fmileto@comcast.net
 ARCHITECT-PROFESSIONAL PLANNER



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the State of Minnesota.

PLANS NOT VALID UNLESS SEALED
 License # 26239

ATION

ROOF DUCT FURNACE

10
1
1 CFM

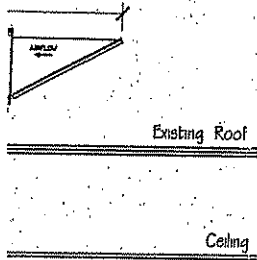
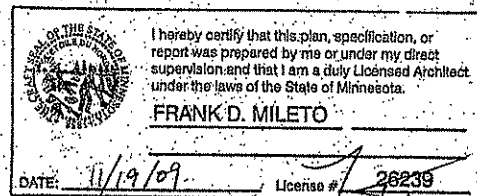



EXHIBIT D



DRAWN: GJ	FUJI STEAK HOUSE 148 2ND. ST. S. WAITE PARK, MN 56387	PROJ. # 52609
DATE: 11-13-2009		SHEET
REVISED:		M-2
VENTILATION PLAN		
FOOD SERVICE CONSULTANT LAM & ASSOCIATES CONSULTING, INC. 34 ALLEN STREET, NEW YORK, NY 10002 TEL: 212 732-3450 FAX: 212 732-9145 EMAIL: HSLAMCO@GMAIL.COM		
<div>FRANK D. MILETO A.I.A. 14 BEAVER BROOK DRIVE, LONG VALLEY, N.J. 07853 Tel: (908) 876-9400 Fax: (908) 876-9455 Email: fmileto@comcast.net ARCHITECT-PROFESSIONAL PLANNER</div> <div>PLANS NOT VALID UNLESS SEALED</div>		



FRANK D. MILETO AIA

14 BEAVER BROOK DRIVE
(908) 876-9400 fax (908) 876- 9455

ARCHITECT-PROFESSIONAL PLANNER

LONG VALLEY, NEW JERSEY 07853
cell (908) 334-8667 fmileto@comcast.net

4 February 2010

Lynette DuFresne c/o
The Minnesota Board of Architecture
85 East 7th Place, Suite 160
St. Paul, MN 55101

Re: Frank D. Mileto, File No. 2010-0035

In response to your January 19, 2010 I offer the following information:

This office prepared plans consisting of drawings G-1, A-1, A-2, E-1, E-2, E-3, M-1, M-2, P-1, P-2, P-3, P-4 for alterations at Fuji Steak House, 148 2nd Street South, Waite Park, MN dated 11-13-2009. (Reduced size copies attached)

On 11-19-09 I signed and sealed the documents for submission by my client to the Waite Park, MN Building Department for review.

On Monday, Nov.30, 2009, I received an email (Exhibit "A", attached) from Inspector Bill Barber questioning some of the details on my plans.

I responded to Mr. Barber by reply email that same day (10 minutes later) (Exhibit "B", attached) that I will look into his comments and respond.

We submitted revised plans C-1, A-1 and A-2 (Exhibit "C")

On January 6, 2010, we received an additional Plan Review Report from Mr. Barber. (Exhibit "D")

We then submitted revised plans and a response letter. (Exhibit "E")

Revised Mechanical plans were also prepared, signed and sealed by Tim Johnson PE, licensed Minnesota Engineer (Reduced size copies attached) and submitted to Waite Park for review.

EXHIBIT E

RECEIVED
FEB 08 2010

We have and will continue to provide all information requested by the Waite Park authorities to ensure compliance.

I have attached reduced size drawings for your review and will submit full size if you desire.

My primary efforts are to provide as complete a set of Construction Documents so as to protect health, safety, and welfare.

I did not intend to violate the rules or practice engineering.

If my efforts went beyond the scope of Architecture it certainly is not intentional and will cease immediately.

I apologize if I misinterpreted the scope of work permitted in:

Minnesota Statutes 326.02, Sub 2 Practice Of Architecture Any person shall be deemed to be practicing architecture, within the meaning of sections 326.02 to 326.15, who holds out as being able to perform or who does perform any professional service, such as planning, design, or supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any private or public buildings, structures or projects, or the equipment or utilities thereof, or the accessories thereto, wherein the safeguarding of life, health, or property is concerned or involved, when such professional service requires the application of the art and science of construction based upon the principles of mathematics, aesthetics, and the physical sciences, acquired by education or training, and by experience. For the purposes of this subdivision "supervision" is a professional service as distinguished from superintending of construction and means the performance or the supervision thereof, of reasonable and ordinary on the site observations to determine that the construction is in substantial compliance with the approved drawings, plans and specifications.

I have practiced Architecture for over 38 years. I take this incident very seriously.

If you or the Board wishes a personal interview to discuss this further, I will travel to Minnesota to meet at your convenience.

If the Board is contemplating disciplinary action I would respectfully request the opportunity to be heard.

Respectfully Submitted,


Frank D. Mileto, AIA

AFFIDAVIT OF SERVICE BY MAIL

RE: In the Matter of Frank Mileto, Unlicensed

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lynette DuFresne, being first duly sworn, deposes and says:

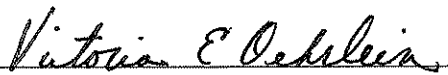
14th That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the day of MARCH, 2011, she served the attached **Settlement Agreement and Cease and Desist Order**, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Mr. Frank Mileto
14 Beaver Brook Drive
Long Valley, New Jersey 07853

CERTIFIED MAIL
Return Receipt Requested
7010 0780 0001 5886 2203


Lynette DuFresne

Subscribed and sworn to before me on
this the 14th day of March, 2011.


(Notary Public)

